

COPIES OF ORIGINAL

ORIGINAL

IRWIN, CAMPBELL & TANNENWALD, P.C.

ATTORNEYS AT LAW
1730 RHODE ISLAND AVENUE N.W.
SUITE 200
WASHINGTON, D.C. 20036
(202) 728-0400
FAX (202) 728-0354

TARA S. BECHT
(202) 728-0401 Ext. 108
tbecht@ictpc.com

RECEIVED

SEP 25 1998

September 25, 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

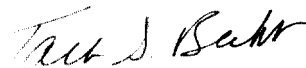
Re: Comments of Moultrie Independent Telephone Company
CC Docket No. 98-147

Dear Ms. Roman Salas:

Transmitted herewith and filed on behalf of Moultrie Independent Telephone Company ("Moultrie") are an original and four copies of Moultrie's comments in the above referenced proceeding.

If you have any questions concerning these comments, please contact the undersigned.

Very truly yours,



Tara S. Becht

Encl.

cc: Ms. Judy Boley, Federal Communications Commission, Room 234
Mr. Timothy Fain, OMB Desk Officer

No. of Copies rec'd
List ABCDE

024

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

SEP 25 1998

In the Matter of)

Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket 98-147

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF
MOULTRIE INDEPENDENT TELEPHONE COMPANY

Moultrie Independent Telephone Company

David A. Irwin
Tara S. Becht
Nathaniel J. Hardy (Bar Admission Pending)

Its Counsel

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, NW
Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax: 202-728-0354

September 25, 1998

Executive Summary

Requiring rural incumbent local exchange carriers ("ILECs"), such as Moultrie Independent Telephone Company ("Moultrie"), to provide advanced telecommunications services to high-cost, sparsely populated areas to do so through an advanced services affiliate subject to the Commission's proposed separate affiliate requirements patently thwarts Congress' objective of providing advanced telecommunications services to all Americans, including those living and working in rural America. It would be economically infeasible for a rural ILEC to provide advanced telecommunications services to rural Americans under the proposed constraints.

The Commission's proposed separate affiliate requirements will prevent Moultrie from developing advanced telecommunications services and would make it impossible for Moultrie to provide these advanced services to its customers at an affordable cost. Therefore, the Commission should not impose these stringent regulations on rural telephone companies.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Deployment of Wireline Services Offering)	CC Docket 98-147
Advanced Telecommunications Capability)	
)	

**COMMENTS OF
MOULTRIE INDEPENDENT TELEPHONE COMPANY**

Moultrie Independent Telephone Company (Moultrie) is a rural independent local exchange telephone company (ILEC) serving 806 access lines in central Illinois. Moultrie has retained counsel to prepare and file comments on its behalf in this proceeding, as well as the Commission's companion Section 706 item¹ because Moultrie believes that the proposed rules in the instant *NPRM*² will have an enormous adverse impact on its business, operations and public services if implemented as proposed.

1. Introduction

The Commission proposes to implement rules requiring ILECs to provide advanced telecommunications services through a separate affiliate or face stiff regulation, including the onerous interconnection and resale obligations of Section 251 of the Communications

¹ *In re, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, CC Docket 98-146.

² *In re, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188, CC Docket 98-147 (1998) (hereinafter *MO&O* and *NPRM*).

Act.³ Specifically, for an advanced services affiliate not to be considered an ILEC, the Commission proposes that the following structural separation and nondiscrimination requirements be met:

1. The advanced services affiliate must operate independently from the ILEC (i.e., the ILEC and affiliate may not jointly own any switching facilities, land or buildings on which the facilities are located, nor may the ILEC perform operating installation or maintenance functions for the affiliate);
2. Transactions must be on an arm's length basis, reduced to writing and made available for public inspection. A detailed description of any asset or service transferred and the terms and conditions of the transaction must be provided on the Internet through the company's webpage within 10 days of the transaction;
3. The affiliate must maintain separate books, records and accounts;
4. The ILEC and affiliate must have separate officers, directors and employees;
5. The affiliate must not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the ILEC;
6. The ILEC may not discriminate in favor of the affiliate in the provision of any goods, services, facilities or information in the establishment of standards;
7. The affiliate must interconnect with the ILEC pursuant to tariff or interconnection agreement and whatever network elements, facilities, interfaces and systems are provided by the ILEC to the affiliate must also be available to unaffiliated entities.⁴

³ 47 U.S.C. § 251.

⁴ *NPRM* at par. 96.

Moultrie believes these requirements should not be applied to rural ILECS. Moultrie submits that these requirements are unwarranted and contrary to the public interest. Moreover, requiring rural ILECs that provide advanced telecommunications services to high-cost, sparsely populated areas to do so through an advanced services affiliate subject to these structural separation requirements patently thwarts Congress' objective of providing advanced telecommunications services to all Americans, including those living and working in rural America.⁵ It would be economically infeasible for a rural ILEC to provide advanced telecommunications services to rural Americans under the proposed constraints. In addition, the Commission's proposed regulations fly in the face of Congress' express policy of encouraging the provision of new technologies and services to the public.⁶ Indeed, it is anomalous that the Commission states that it is "committed, however, to ensuring that incumbent LECs make their decisions to invest in and deploy advanced telecommunications services based on the market and their business plans, rather than regulation."⁷ Forcing these onerous separate affiliate regulations on rural LECs falls short of this commitment.

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Title VII, § 706 (emphasis added).

⁶ See, 47 U.S.C. § 157.

⁷ *NPRM* at par. 13.

II. **The Separate Affiliate Requirements Proposed in the NPRM Will Prevent the Deployment of Advanced Telecommunications Services by Rural Telcos**

The *NPRM* asks if these separate affiliate requirements should apply to all LECs regardless of size.⁸ Moultrie assures the Commission that rural telcos will be financially unable to deploy advanced telecommunications services if they are forced to do so through these separate affiliate requirements. Even if the Commission's financing, staffing and equipment requirements could be met by a rural carrier, the costs to consumers in these markets would be astronomical since the costs would be spread among so few customers. It will be impossible for a rural telco to market advanced telecommunications services because they will not be reasonably priced. Therefore, advanced telecommunications services will not be provided to rural America if the Commission imposes these stringent regulations on rural ILECs.

III. **History Repeats Itself: The Commission Found That a Separate Affiliate Requirement Will Impede the Development of New Technologies**

The Commission found in the past that separate affiliate requirements actually impede the development of new technologies.⁹ The same will be true if the Commission imposes its proposed separate affiliate requirements on rural ILECs. In the context of the

⁸ *NPRM* at par. 98.

⁹ *In re, Amendment of Section 64.702 of the Commission's Rules and Regulations, Policy and Rules Concerning Rates for Competitive Common Carrier Service and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Report and Order, 104 FCC 2d 958 (1986) (*Computer III*).

provision of enhanced services by AT&T and the RBOCs, the Commission determined that the burdens of separate subsidiaries outweighed any possible benefits from these structural safeguards. Separate subsidiaries, the Commission determined, were economically inefficient, impeded technological development, and withheld these benefits from consumers.¹⁰ The elimination of structural safeguards "will benefit all users of both basic and enhanced (services). We find that for the provision of enhanced services, the costs from the structural separation requirements in lost innovation and inefficiency render these requirements far less desirable than nonstructural safeguards."¹¹ In reaffirming its decision in *Computer III*, the Commission stated "if adequate safeguards are in place, the public should not be denied provision of an enhanced service that is integrated with basic services and facilities."¹²

The Commission's proposed structural separations requirements will impede the development of advanced telecommunications services by rural telcos and will also foreclose the deployment of advanced telecommunications services in rural America. The Commission must not overlook its previous mistakes. Structural separations are

¹⁰ *Id.* at par. 78-99.

¹¹ *Id.* at par. 98.

¹² *In re, Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); Policy and Rules Concerning Rates for Competitive Common Carrier Service and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Memorandum Opinion and Order on Reconsideration, 2 FCC Rcd. 3072 at par. 30 (1987) (*Computer III*) (on reconsideration).

burdensome, economically inefficient and impede technological development. Their impact on small rural companies would be unavoidably disastrous.

IV. **The Commission's Proposed Rules Will Create a Barrier to Entry for Small Businesses In Opposition to Section 257 of the Communications Act**

Section 257 of the Act mandated that the Commission conduct an inquiry into the barriers to entry of the telecommunications industry for small businesses.¹³ The Commission issued a report in which it determined that there were a limited number of barriers that it had the power to eliminate.¹⁴ If the Commission imposes its proposed advanced services affiliate requirements on rural ILECs it will create an unnecessary barrier to entry into the advanced telecommunications services market for small businesses rather than facilitate the entry of small businesses into the telecommunications industry. The Commission has the power to forestall this grievous error.

The Commission has defined "market entry barriers" as "those impediments to entry within the Commission's jurisdiction that so significantly distort the operation of the market and harm consumer welfare that they justify regulatory intervention."¹⁵ Moultrie asserts that the Commission's proposed regulations will create the very type of impediment that Congress mandated the Commission to eliminate. As outlined above, the Commission's

¹³ 47 U.S.C. § 257.

¹⁴ *In re, Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, Report, 12 FCC Rcd. 16802 (1997)

¹⁵ *Id.* at par. 19.

proposed regulations will foreclose the participation of small rural telecommunications companies in the development, promotion and provision of advanced telecommunications services in rural America.

The Commission's proposed advanced services affiliate policy is in direct contravention with the Commission's stated desire to alleviate burdens and barriers for small businesses when it has the power to do so. The Commission should not subject rural ILECs to the separate affiliate requirement. To do so would all but ensure that rural telcos could not effectively compete with larger telecommunications providers in the provision and development of advanced telecommunications services.

Specifically, Moultrie is a family owned business which operates with a staff of 20 employees, including officers and directors. The Commission's proposed affiliate requirements would mean that Moultrie would have to triple its current employee base in order to create a separate board of directors and separate employees for each affiliate company to cover the day-to-day operations of the affiliates without overlapping Moultrie's employees, officers and directors.

In addition, like many rural telephone companies, Moultrie recycles its earnings by reinvesting in both the company and the local community.¹⁶ Moultrie is constantly

¹⁶ For example, Moultrie has donated both time and money by wiring local schools for the Internet.

upgrading its service offerings in order to ensure that its customers have state-of-the art advanced services.

In contrast, most of the larger LECs aggregate the populations of various exchange areas by installing smart remotes to provide uninterrupted basic local calling service. However, these remotes are unable to provide customers with certain types of enhanced services if the host/remote link is lost. If Moultrie is required to spend additional monies on unnecessary and duplicative overheads of separate affiliates, it will be unable to put reinvest into its community or in the company itself. The community as a whole and Moultrie's customers will suffer. If the FCC pursues its proposed course, it will close off many rural subscribers from their only source of enhanced services, and likewise will foreclose Moultrie's ability to develop and promote advanced telecommunications services, which is precisely what Congress mandated the Commission to facilitate.

This is more than a matter of policy. It is a matter of law -- the Commission's separate affiliate requirements could ultimately result in a "taking" of a rural company's assets and business opportunities.

V. **Conclusion**

The proposed separate affiliate requirements will prevent Moultrie from developing advanced telecommunications services and would make it impossible for Moultrie to provide these advanced services to its customers at an affordable cost. Moultrie knows that other rural telcos would likewise be unable to provide these services to their customers for the

reasons outlined above. Therefore, Moultrie implores the Commission not to implement its proposed rules requiring advanced services affiliates for rural ILECs; rather, the Commission must permit rural ILECs to directly provide advanced telecommunications services without jumping through additional unnecessary and extremely costly regulatory hoops.

Respectfully submitted,
Moultrie Independent Telephone Company



David A. Irwin

Tara S. Becht

Nathaniel J. Hardy (Bar Admission Pending)

By its Counsel

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, NW
Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax: 202-728-0354

September 25, 1998